ECORD
AND
RIEFS

No. 15-1204

In The

Supreme Court of the United States

DAVID JENNINGS, et al.,

Petitioners,

v.

ALEJANDRO RODRIGUEZ, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF AMICI CURIAE AMERICANS FOR IMMIGRANT JUSTICE, ET AL. IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

Amici curiae are community groups, immigrant rights organizations, law clinics, and legal service providers whose members and clients face the severe consequences of prolonged detention without bond hearings.[1] We have a profound interest in ensuring that the voices of our members and clients are included in the resolution of the legal issues in this case.

We previously submitted a brief describing the harsh and perverse effects of prolonged detention on our members and clients, their families and communities, and the immigration system that Congress designed to maintain family unity and offer humanitarian relief. Brief of Americans for Immigrant Justice, et al., *Jennings v. Rodriguez*, No. 15-1204 (filed Oct. 24, 2016) (hereinafter "AIJ Br.").[2] The Court then requested additional briefing on the constitutionality of detention beyond six months without a bond hearing. We now submit this additional brief to illustrate the profound liberty interests at stake when individuals with strong incentives to appear in court are detained for months and years in prison-like conditions.

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[1] Amici state that no counsel for a party authored any part of this brief, and no person or entity other than amici and their counsel made a monetary contribution to the preparation or submission of this brief. Both petitioners and respondents have consented to the filing of this brief pursuant to Rule 37.3(a).

[2] An annotated version of our previously filed brief is available at https://www.prolongeddetentionstories.org.

SUMMARY OF ARGUMENT

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty. . . ." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). That liberty "'denotes not merely freedom from bodily restraint but also the right of the individual . . . to engage in any of the common occupations of life, . . . to marry, establish a home and bring up children, . . . and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.'" *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

Prolonged detention gravely burdens these liberties. It inflicts not only bodily restraint, but also long-term separation from family and gainful employment; imposes physical, mental, and emotional harms that are materially indistinguishable from punishment; and coerces people into accepting erroneous deportation. Given the substantial liberty interests at stake in this case, a bond hearing is the constitutionally proper protection of due process.

Denied a day in court for a judge to determine if their detention is justified, individuals in prolonged detention who present neither a flight risk nor a danger languish in prisons and jails for months or even years. *See* AIJ Br. at 3-17. Their prolonged detention strips them of basic human dignities in a manner that is, from a practical viewpoint, identical to punitive incarceration. Individuals are locked in cells, separated

from their families, and thrown into solitary confinement for minor infractions. They lose their jobs and homes, and their families pay the price. No other civil or criminal confinement permits such treatment without an individualized hearing at some fixed point in time.[3]

The government does not dispute that the Constitution demands due process protection for the liberty of at least some people trapped in prolonged mandatory immigration detention. But it urges this Court to limit any such protection to the "extraordinary case": detentions of some indeterminate length between three and twenty years. Second Brief of Petitioners at 46, *Jennings v. Rodriguez*, No. 15-1204 (filed Jan. 31, 2017) (hereinafter "Gov't Second Br."); Transcript of Oral Argument at 12-15.[4] Even then, it would place the

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[3] *See* Second Brief of Respondents at 12, *Jennings v. Rodriguez*, No. 15-1204 (filed Jan. 31, 2017) (citing cases).

[4] JUSTICE KAGAN: . . . Could the Court simply say, well, three years is too long? It doesn't really matter what kind of evidence you have; three years is too long.

GENERAL GERSHENGORN: So, Your Honor, I – I think our position in that – in that situation would be that as long as the government was diligently – we – I mean, if it were 20 years, I mean, we could go on, then, of course, that might be a concern that, in fact, we were no longer trying to effectuate removal. I think we would make the argument in the three years Your Honor was hypothesizing, but that's not the situation we have[.] It's been steady –

. . .

JUSTICE BREYER: You said, well, 20 years would be different, and – and –

GENERAL GERSHENGORN: I did it – to be clear, Your Honor, I did it as a matter of constitutional law.

burden of protection on the injured party, requiring a detained individual – more often than not unrepresented and with limited English-language proficiency – to file and litigate a habeas petition in federal court simply to seek an individualized hearing on whether her detention is justified. The government defends its position in part by pointing to the process afforded to immigrants in removal proceedings generally, and arguing that those who are detained hold the keys to their own cells if they would only give up their claims and accept deportation.[5] Gov't Second Br. at 13, 34-35.

The government's position gravely undervalues the serious liberty interests at stake in this case. It

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[5] According to the government, individuals who have final orders of removal – i.e., who have already been detained pending a decision of the Immigration Judge *and* the Board of Immigration Appeals – may then agree to their deportation (thus securing their freedom from immigration detention) and litigate a federal appeal abroad. Gov't Second Br. at 34. This solution provides no remedy for the months and years of detention that may occur prior to a final order of removal, nor does it guarantee that a person who is deported pending a federal appeal will be able to return to the U.S.

In fact, the government, as a matter of policy, will not pay for the return of indigent petitioners who prevail on federal appeals after they are removed; and any assurance of the possibility of return is contingent on the vagaries of the administration's internal, unenforceable policies, a risk that detainees would take at their peril. *See* Tianyin Luo and Sean Lai McMahon, *Victory Denied: After Winning On Appeal, An Inadequate Return Policy Leaves Immigrants Stranded Abroad*, 19 BENDER'S IMM. BULLETIN 1061 (Oct. 1, 2014). In any event, the significant due process harms of prolonged detention occur far before a final order of removal is entered, and the government's solution does not address these harms.

ignores the unique harms caused by prolonged detention, above and beyond those caused by one's placement in removal proceedings. Its position effectively permits the punitive conditions of prolonged detention to coerce people into giving up their meritorious claims.

Below, our clients' stories illustrate the profound losses of liberty that the government leaves unmentioned. Their stories, emblematic of countless others across decades of mandatory detention, have taught us that without bond hearings, people who are not flight risks or dangers will languish and suffer in detention for months or years on end.

ARGUMENT

I. There Is No Meaningful Difference Between Prolonged Immigration Detention and Punitive Incarceration.

An honest evaluation of the liberty at stake in prolonged mandatory detention requires a clear-eyed assessment of the nature of immigration detention. Recent changes to the detention system and the day-to-day reality of detainees challenge the assumption that it is merely non-punitive civil incapacitation. In fact, prolonged mandatory detention is materially indistinguishable from punitive incarceration, and is deserving of robust due process protections. Today's detention centers operate on a penal model, are experienced by immigrants as punishment, and cause grave

deprivations of liberty for immigrants trapped in the detention system for months or years.

A. Immigration detention operates on a penal model.

The use of immigration detention as an enforcement tool has expanded to an unprecedented scope since this Court's decision in *Demore v. Kim* over a decade ago. 538 U.S. 510 (2003). In spite of historic lows in undocumented immigration,[6] since 2011 the government has detained over 400,000 immigrants annually, roughly double the number at the time *Demore* was decided.[7] Immigration court caseloads have similarly skyrocketed for individuals and families alike, causing record delays in the adjudication of their claims and further extending the length of detention.[8] A 2016

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[6] Robert Warren, Ctr. for Migration Stud., *US Undocumented Population Drops Below 11 Million in 2014, with Continued Declines in Mexican Undocumented Population*, 4 J. ON MIGRATION AND HUM. SECURITY 1, 3 (2016), http://dx.doi.org/10.14240/jmhs.v4i1.58.

[7] MIGRATION AND REFUGEE SERVICES/UNITED STATES CONFERENCE OF CATHOLIC BISHOPS AND THE CENTER FOR MIGRATION STUDIES, UNLOCKING HUMAN DIGNITY: A PLAN TO TRANSFORM THE U.S. IMMIGRANT DETENTION SYSTEM 9 (2015), http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf.

[8] The backlog in immigration courts currently stands at over 533,000 cases, a historical high. Transactional Records Access Clearinghouse, Syracuse Univ., *Immigration Court Backlog Tool*, http://trac.syr.edu/phptools/immigration/court_backlog/. As a result, a case now takes on average 678 days – close to two years – to resolve, and in some jurisdictions the average wait time is

report estimated that in order to bring the average case-processing time to under one year by 2023, an additional 150 immigration judges would need to be hired.[9] Instead, case-processing times are certain to lengthen due to the recent imposition of "a freeze on the hiring of Federal civilian employees to be applied across the board in the executive branch" – preventing the hiring of additional immigration judges.[10]

As detention has expanded, it has become increasingly penal in nature. Our nation's first immigration detention centers were run by the federal government for the purpose of processing and screening newcomers to our shores.[11] But today, the immigration detention system consists of more than 200 prisons and jails operating on a penal model – ninety percent of which are

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edging towards three years. Transactional Records Access Clearinghouse, Syracuse Univ., *Average Time Pending Cases Have Been Waiting in Immigration Courts*, http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php.

[9] HUMAN RIGHTS FIRST, REDUCING THE IMMIGRATION COURT BACKLOG AND DELAYS (2016), http://www.humanrightsfirst.org/sites/default/files/HRF-Backgrounder-Immigration-Courts.pdf.

[10] Presidential Memorandum Regarding the Hiring Freeze, 82 Fed. Reg. 8493 (Jan. 23, 2017). During the previous immigration court hiring freeze, the case backlog increased by more than 298,000 over four years. *See Oversight of the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration and Border Security of the H. Comm. on the Judiciary*, 114th Cong. 5-6 (2015) (statement of Juan P. Osuna, Director, Executive Office for Immigration Review).

[11] DANIEL WILSHER, IMMIGRATION DETENTION: LAW, HISTORY, POLITICS 11-14 (2012).

run by private prison corporations or county correctional departments.[12] In some of these facilities, immigrants are held with individuals awaiting criminal trial or serving criminal sentences, and all are subject to onerous restraints on their liberties.[13] Only months ago, the Department of Homeland Security ("DHS") converted the same private prisons that the Department of Justice ("DOJ") had recently abandoned into immigration detention facilities.[14] The DOJ had closed the private prisons after announcing its intention to "reduc[e] – and ultimately end[] – [DOJ's] use of privately operated prisons," due in part to their failure to "maintain the same level of safety and security" as Federal Bureau of Prison facilities.[15]

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[12] U.S. DEP'T OF HOMELAND SEC., HOMELAND SEC. ADVISORY COUNCIL, REPORT OF THE SUBCOMMITTEE ON PRIVATIZED IMMIGRATION DETENTION FACILITIES 6 (2016), https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf.

[13] AMNESTY INT'L, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA 37 (2009), http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf.

[14] Matt Zapotosky, *The Justice Department Closed this Troubled Private Prison. Immigration Authorities are Reopening It.* WASH. POST (Oct. 27, 2016), https://www.washingtonpost.com/world/national-security/the-justice-department-closed-this-troubled-private-prison-immigration-authorities-are-reopening-it/2016/10/27/6e52855e-9b87-11e6-a0ed-ab0774c1eaa5_story.html?utm_term=.a21cc6889cac.

[15] Memorandum from Sally Q. Yates, Deputy Att'y Gen., to Acting Dir., Fed. Bureau of Prisons, Reducing our Use of Private Prisons (Aug. 18, 2016), https://www.justice.gov/opa/file/886311/download.

We now stand at the precipice of exponential growth in this privatized, punitive model of immigration detention. The executive branch has recently committed to deporting or "incarcerat[ing]" 2 to 3 million people.[16] To accomplish this, it has ordered DHS to "allocate all legally available resources to . . . establish contracts to construct, operate, or control facilities to detain aliens. . . ."[17] A recent memorandum to top DHS officials lays out a projected doubling of the daily immigration detainee population to 80,000.[18] Investors project robust growth in the private prison industry, driven chiefly by the continued expansion of immigration detention.[19]

Meanwhile, inside nominally "civil" detention centers throughout the country, immigrants pass months and years behind bars and in prison jumpsuits, shackled during visitation and court, subjected to surveillance and strip searches, and referred to by

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[16] *60 Minutes: The 45th President* (CBS News broadcast Nov. 13, 2016), http://www.cbsnews.com/news/60-minutes-donald-trump-family-melania-ivanka-lesley-stahl/.

[17] Exec. Order. No. 13,767: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 25, 2017).

[18] Brian Bennett, *Not Just 'Bad Hombres': Trump is Targeting up to 8 Million People for Deportation*, L.A. TIMES (Feb. 4, 2017), http://www.latimes.com/politics/la-na-pol-trump-deportations-20170204-story.html.

[19] Tomi Kilgore, *Trump Presidency is Providing a Great Opportunity to Buy Prison Stocks*, MARKETWATCH (Jan. 20, 2017), http://www.marketwatch.com/story/trump-inauguration-highlights-best-opportunity-to-buy-prison-stocks-in-years-2017-01-19.

numbers.[20] Access to the things we take for granted – movement, fresh air, and even human touch – is restricted or denied altogether.[21] Families bear the emotional and financial brunt of months and years of separation from their loved ones.

B. In their own words, immigrants experience prolonged detention as punishment.

The deprivations of liberty inherent in immigration detention are even more severe for those trapped in prolonged mandatory detention. Some of their stories were profiled in our previous brief: Warren

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[20] *See, e.g.*, AMNESTY INT'L, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA 37-39 (2009), http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf; NAT'L IMMIGRANT JUSTICE CENTER & PHYSICIANS FOR HUMAN RIGHTS, INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION 10-11 (2012), http://static.prisonpolicy.org/scans/Invisible.pdf; HUMAN RIGHTS FIRST, JAILS AND JUMPSUITS: TRANSFORMING THE U.S. IMMIGRATION DETENTION SYSTEM – A TWO-YEAR REVIEW 7-10 (2011), http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

[21] Visitation, including "contact visits," is highly restricted in immigration detention. *See, e.g.*, N.Y. UNIV. SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC, ET AL., LOCKED UP BUT NOT FORGOTTEN: OPENING ACCESS TO FAMILY & COMMUNITY IN THE IMMIGRATION DETENTION SYSTEM 9-12 (2010), https://www.afsc.org/sites/afsc.civicactions.net/files/documents/LockedUpFINAL.pdf. Some facilities only permit visitation through video, and several facilities have limited or no access to outdoor recreation. *See, e.g.*, DET. WATCH NETWORK, EXECUTIVE SUMMARY: EXPOSE AND CLOSE 3 (2012), http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Executive%20Summary.pdf.

Hilarion Joseph (detained 3.2 years), Astrid Morataya (2.5 years), Emannuel Boukari (2.5 years), Arnold Giammarco (1.5 years), Juan Santos (1.1 years), Brayan Fernandez (7 months), Sayed Omargharib (1.8 years), Lorenzo Carrillo (3 years), Ahilan Nadarajah (4.4 years), Maria Alvarez (7 months), Leandro Placencia de la Rosa (1.8 years), Horatio Gomez (2.5 years), Patrick Thaxter (2.9 years), and Sylvester Owino (9 years).

Below, some of these individuals describe their experience in immigration detention in their own words. Their stories are sadly commonplace, and are followed by others that show how prolonged immigration detention is a harshly penal system that carries grave deprivations of liberty for the individuals trapped within it.

"*It was a complete nightmare. The hardest part was being away from my wife and daughter, who was two years old at the time. Watching my daughter behind a pane of glass, I still remember her crying that she wanted me to hold her, she wanted me to play with her like I used to. But I couldn't.*"

– **Arnold Giammarco**[22]

Mr. Giammarco is a lawful permanent resident of fifty years, a husband and father to U.S. citizens, and a U.S.

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[22] Arnold Giammarco, *After 50 Years as a Legal Immigrant, I Spent 18 Months in Immigration Detention Without a Bail Hearing*, PUB. RADIO INT'L'S THE WORLD (Nov. 30, 2016), https://www.pri.org/stories/2016-11-30/after-50-years-legal-immigrant-i-spent-18-months-immigration-detention-without.

Army and National Guard veteran.[23] Read Mr. Giammarco's first-hand account about the impact of his eighteen months of prolonged detention, which convinced him to abandon a good-faith claim to citizenship and accept an order of deportation. He and his family continue to fight for the chance to be reunited: https://www.pri.org/stories/2016-11-30/after-50-years-legal-immigrant-i-spent-18-months-immigration-detention-without.

"I only saw my kids three times in the years I was locked away. A five-minute phone call with them cost twenty-five dollars. What can you really tell your family in five minutes? I was just a single mom trying to survive and keep my family united. I'll never get back that time with my children."

– Astrid Morataya[24]

Ms. Morataya is a lawful permanent resident, a survivor of sexual violence, and mother to three U.S. citizen

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[23] *Id.*; *see also* AIJ Br. at 13-15.

[24] *See* Ryan Devereaux, *A Mother's Appeal to the Supreme Court: "I Had to Fight to Stay in the Country For My Children,"* THE INTERCEPT (Nov. 30, 2016), https://theintercept.com/2016/11/30/i-had-to-fight-to-stay-in-the-country-for-my-children-a-mothers-deportation-appeal-before-the-supreme-court/; Amanda Sakuma, *SCOTUS to Decide if Indefinite Immigrant Detention is Illegal*, NBC NEWS (Nov. 30, 2016), http://www.nbcnews.com/news/us-news/scotus-decide-if-indefinite-immigrant-detention-illegal-n689541; Kristina Shull, Rachel Levenson & Terry Ding, *Last Chance This Term for the Supreme Court to Stand Up for Immigrants in Detention*, THE HILL: CONGRESS BLOG (Nov. 28, 2016), http://thehill.com/blogs/congress-blog/judicial/307662-jennings-v-rodriguez-last-chance-this-term-for-the-supreme-court.

children.[25] Hear Ms. Moratoya describe how she went from preparing her daughter for kindergarten to the shock of being detained for over two years in a county jail in her own words here: https://www.youtube.com/watch?v=Bw5zaZwVfvo.

"The conditions were extremely uncomfortable. It was a form of intimidation so we could be forced to 'sign out' and be deported. We had to make a decision between that or to stay and suffer. And we were told to do this – to give up – by the corrections officers."

– Warren Hilarion Joseph[26]

Mr. Joseph is a U.S. citizen, father, and decorated U.S. Army combat veteran.[27] Hear Mr. Joseph describe the indignities he faced in detention for over three years in a county jail as a lawful permanent resident: https://www.youtube.com/watch?v=pSz2GX6QaWs&t=323s.

"Detention centers are run the same way as jails, maybe worse. You are always cold, they never turn off the AC, they give you a mattress that is maybe an inch thick. The type of food they give you, I wouldn't even give that to my dog. You can't eat, can't sleep, can't use the

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[25] AIJ Br. at 7-9.

[26] *See* Democracy Now!, *Can the U.S. Detain Immigrants Indefinitely? Supreme Court Hears Case as Trump Prepares for Office*, YouTube (Dec. 2, 2016), https://www.youtube.com/watch?v=pSz2GX6QaWs&t=356s.

[27] AIJ Br. at 5-7.

bathroom in peace. All you see is people crying every day."

– **Alexander Lora**[28]

Mr. Lora has been a lawful permanent resident since the age of seven. When Mr. Lora was placed in mandatory immigration detention, his two-year-old U.S. citizen son was placed in foster care.[29] Hear Mr. Lora describe the harsh conditions of detention he endured before finally receiving a bond hearing that allowed him to reunite with his toddler son: https://www.youtube.com/watch?v=N-1jluidWiI.

C. Prolonged detention causes grave deprivations of liberty through physical, mental, and emotional abuse and neglect.

Individuals in prolonged detention are subjected to the punitive use of solitary confinement, restricted and substandard access to medical care, physical and sexual abuse from prison staff, coercion of labor, and deprivation of family contact. While such deprivations are commonplace in prolonged detention, they fall especially hard on vulnerable populations, including individuals with disabilities, lesbian, gay, bisexual and

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[28] Talking Eyes Media, *Prolonged Detention: A Short Documentary on the Landmark 'Lora' Case*, YouTube (Nov. 26, 2016), https://www.youtube.com/watch?v=N-1jluidWiI.

[29] AIJ Br. at 38.

transgender (LGBT) immigrants, and asylum seekers fleeing persecution.

Solitary confinement. There is perhaps no clearer example of the severe burdens on liberty caused by immigration detention than the prevalence of solitary confinement as a tool to punish and control. Solitary confinement is a "terror and peculiar mark of infamy." *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (quoting *In re Medley*, 134 U.S. 160, 170 (1890)). A person held in solitary confinement is locked in a cell for 23 hours a day, receives meals through a narrow slot in a sealed door, and is barred from phone calls or visits from family members or other loved ones. It is one of the most extreme punishments a person may experience in prison.

As described in our previous brief, **Ms. Morataya** twice faced solitary confinement in immigration detention: first for having a forgotten sugar packet in her uniform after mealtime, and again for lagging behind her cellmates because she had begun menstruating and was trying to find a sanitary napkin. *See* AIJ Br. at 7-8.

Ms. Morataya's experience is routine in immigration detention. According to one investigation, on any given day, approximately 300 immigrants are held in

solitary confinement at the 50 largest immigration detention facilities.[30] Half were isolated for over two weeks; 1 in 9 was isolated for over two months.[31]

Solitary confinement is often the first response to infractions of rules that only exist in prisons and jails.[32] In Essex County Correctional Facility, a penal facility that reserves 800 beds for immigration detention in Newark, New Jersey, 96% of all infractions were punished with solitary confinement from 2013 to 2015. In that same time period alone, solitary confinement was used against immigrants in detention 428 times.[33] These sentences were frequently imposed arbitrarily and disproportionately. For example, one detainee received a 12-day sentence for damaging an identification wristband, while another received a 15-day

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[30] Ian Urbina & Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. TIMES (Mar. 23, 2013), http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html.

[31] *Id.*

[32] NAT'L IMMIGRANT JUSTICE CENTER & PHYSICIANS FOR HUMAN RIGHTS, INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION 17-20 (2012), http://static.prisonpolicy.org/scans/Invisible.pdf; PHYSICIANS FOR HUMAN RIGHTS, BURIED ALIVE: SOLITARY CONFINEMENT IN THE U.S. DETENTION SYSTEM 11-14 (2013), https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

[33] N.J. ADVOCATES FOR IMMIGRANT DETAINEES, ET AL., ISOLATED IN ESSEX: PUNISHING IMMIGRANTS THROUGH SOLITARY CONFINEMENT 5-6 (2016), https://www.afsc.org/sites/afsc.civicactions.net/files/documents/Isolated%20in%20Essex%20Full%20Report%202016_1.pdf.

sentence for refusing to close his food port after he found worms in his meal.[34]

Solitary confinement has serious mental health effects, even when imposed for relatively short periods of time. These include hallucinations, panic attacks, paranoia, and suicidal ideation.[35] For long-term immigration detainees experiencing trauma from previous persecution and torture, such mental health dangers are only exacerbated.

Medical neglect. Immigrants with serious health conditions are subject to inadequate care and even fatal neglect when held in immigration prisons and jails for prolonged periods. Such victims of inadequate care include people like **Mr. Joseph**, a decorated combat veteran whose wartime injury to his foot flared up during his detention at Hudson County Correctional Facility in New Jersey. *See* AIJ Br. at 5-6. Mr. Joseph ultimately required surgery after years of requests for proper care went unheeded. *Id.*

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[34] *Id.* at 6.

[35] Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 502 (2006) (noting that "[a] long list of possible symptoms from insomnia and confusion to hallucinations and outright insanity has been documented" among people subjected to solitary confinement); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325 (2006) (noting that anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors are all associated with solitary confinement).

Mr. Joseph's experience at Hudson is not unique. In May 2016, a civil rights complaint was filed against the facility due to a pattern and practice of substandard medical care that included delayed or denied treatment, overmedication of detainees that put them in coma-like states, and unsanitary conditions that caused the spread of bacterial infections.[36] Consider the experience of **Salvador Venegas**,[37] who was detained for a year and a half at Hudson:

> Mr. Venegas, a lawful permanent resident of almost three decades, had a serious preexisting medical condition that was known to Hudson officials when he was taken into immigration custody. Although he was at high risk of cancer due to this condition, he was never given an appropriate medical screening. Shortly after his detention began, Mr. Venegas began to experience acute pain.
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> Over the following months, Mr. Venegas developed spreading pain, bleeding, stiffness and numbness, and swollen feet. He repeatedly informed Hudson staff of his worsening condition, but was only treated with over-the-counter medications. A full year after the

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[36] Nina Bernstein, *Health Care at New Jersey Jail Is Substandard, Watchdog Groups Say*, N.Y. TIMES (May 11, 2016), https://www.nytimes.com/2016/05/12/nyregion/health-care-at-new-jersey-immigrant-jail-prompts-claim.html?_r=0.

[37] The name "Salvador Venegas" is a pseudonym to protect Mr. Venegas's privacy. The facts of his case are detailed in a declaration by his legal counsel. *See* Decl. of Terry Ding of the NYU Immigrant Rights Clinic (on file with amici).

> symptoms started, he was diagnosed with advanced stage cancer by outside physicians. He spent eighteen painful months in detention with inadequate treatment, and only was able to begin necessary chemotherapy after his release.

People with serious physical disabilities also receive inadequate treatment in immigration detention. **Gerardo Corrales**,[38] who is paraplegic and wheelchair-bound, was nineteen years old when he was put into detention. He suffered a life-threatening infection due to the facility's lack of medical care:

> Mr. Corrales has lived in the United States since he was two years old. In 2014, a few weeks before his high school graduation, he was the victim of an indiscriminate drive-by shooting that left him paralyzed below his waist. Local police raided his family's home while he was still in the early stages of his recovery. Arrested for possession of an anti-anxiety medication without a prescription, Mr. Corrales was turned over to immigration custody and put into mandatory detention in Adelanto Detention Center because of a conviction from his youth.

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[38] The facts of Mr. Corrales's case are described in an affidavit by an attorney familiar with the case. *See* Affidavit of Christina Fialho, Letter from 29 Members of Congress to Sarah Saldaña, Director, Immigration and Customs Enforcement (June 22, 2015), http://chu.house.gov/sites/chu.house.gov/files/documents/Gerardo_Corrales_Affidavit_Fialho.pdf.

Adelanto failed to provide even a minimal level of accommodation for Mr. Corrales's serious disability. He was forced to reuse catheter bags and consequently developed a severe urinary tract infection that required hospitalization. Doctors informed Mr. Corrales that he was suffering from kidney failure and could have died from the infection without prompt medical attention. Yet even after his return to custody from the hospital, Adelanto staff continued to deny him sufficient catheter bags. When his infection caused him to urinate in his pants, detention staff refused to provide him a change of clothing.

Nor did Mr. Corrales receive assistance with his daily living needs or the physical therapy essential to his recovery process. Instead, he was entirely dependent on other detained men to help him use the bathroom, wash himself, and pick himself up when he fell from his wheelchair. Throughout his detention, his attorneys repeatedly alerted ICE and DHS authorities of the medical neglect and mistreatment he was subjected to. They never received a substantive response.

After nine months of detention, Mr. Corrales was finally released on a *Rodriguez* bond and is now under the care of his family. He is currently seeking a special visa for crime victims who assist law enforcement and is applying for college.

Physical, emotional, and sexual abuse. Many immigrants in prolonged detention experience physical, emotional, and sexual abuse.[39] From 2007 to 2011, there were nearly 200 reports of sexual assault in immigration detention centers across the country.[40] One Texas correctional officer was accused of sexually assaulting nine different detained women.[41] In Baker County Detention Center in Florida, a young Haitian immigrant reported that after he requested that the air conditioning be adjusted, a correctional officer became enraged, saying "I'm tired of you . . . immigrants coming to my country thinking you can get what . . . you want." The officer proceeded to pin him down, place him in handcuffs, and twist his genitals.[42]

LGBT immigrants face particularly high risks of abuse, and in detention many find themselves victims

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[39] *See, e.g.*, SOUTHERN POVERTY LAW CENTER, ET AL., SHADOW PRISONS: IMMIGRANT DETENTION IN THE SOUTH 14-16 (2016), https://www.splcenter.org/sites/default/files/ijp_shadow_prisons_immigrant_detention_report.pdf; NATIONAL PRISON RAPE ELIMINATION COMMISSION, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 21-23 (2009), https://www.ncjrs.gov/pdffiles1/226680.pdf; HUMAN RIGHTS WATCH, DETAINED AND AT RISK: SEXUAL ABUSE AND HARASSMENT IN UNITED STATES IMMIGRATION DETENTION 8-14 (2010), https://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.

[40] Press Release, Am. Civil Liberties Union, ACLU of Texas Today Files Federal Lawsuit on Behalf of Women Assaulted at T. Don Hutto Detention Center (Oct. 19, 2011), https://www.aclu.org/news/documents-obtained-aclu-show-sexual-abuse-immigration-detainees-widespread-national-problem?redirect=immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse.

[41] *Id.*

[42] *See* SHADOW PRISONS, *supra* note 38, at 47.

of the same persecution they fled in their home countries. **Gretta Soto Moreno,**[43] a transgender asylum seeker, suffered sexual assault and years of beatings and threats before fleeing to the U.S.:

> Ms. Soto Moreno was detained for three years, two of them in an all-men's unit in Eloy Detention Center in Arizona. There, she was subject to strip searches by male guards who touched her inappropriately, and frequent, demeaning insults from the guards and other inmates. She filed repeated grievances, to little result.
>
> After two years of daily abuse, ICE transferred Ms. Soto Moreno to a segregated unit for LGBT detainees in the Santa Ana City Jail in Southern California. No longer in an all-men's unit, Ms. Soto Moreno hoped that her treatment would improve. But she found that the full body cavity searches at Santa Clara were even more frequent and invasive than at Eloy, and performed by guards who told her and other asylum-seekers to "act male" and use their "male voices." In both facilities, Ms. Soto Moreno was denied access to sufficient hormonal therapy medications.

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[43] The facts of Ms. Soto Moreno's case are detailed in Brief for Appellant at 3-6, *Moreno v. Lynch*, 624 F. App'x 531 (9th Cir. 2015) (No. 14-72395). *See also* Tizinia Rinaldi, *She Fled Abuse in Mexico, and Now This Trans Woman Says She Was Abused in Immigration Detention Too*, PUB. RADIO INT'L'S THE WORLD (Apr. 14, 2016), https://www.pri.org/stories/2016-04-14/after-almost-three-years-immigration-detention-and-abuse-transgender-woman-looks.

> In 2016, Ms. Soto Moreno won her Ninth Circuit appeal, was released on a *Rodriguez* bond, and placed on an electronic monitor. She now lives in Los Angeles, studying for her high school diploma while she awaits the outcome of her asylum case.

Forced labor. Many private prisons and county jails depend on detained immigrants to work to maintain their facilities, often at no pay or for a mere $1 per day.[44] **Pedro Guzmán,**[45] the father of a young U.S. citizen son, was coerced into working for $1 a day under threat of solitary confinement during his nineteen months in immigration detention:

> Mr. Guzmán came to the United States at eight years old with his mother, through whom he had immigration status. As a young man he moved to Minneapolis, where he fell

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[44] Ian Urbina, *Using Jailed Migrants as a Pool of Cheap Labor*, N.Y. TIMES (May 24, 2014), https://www.nytimes.com/2014/05/25/us/using-jailed-migrants-as-a-pool-of-cheap-labor.html.

[45] *See* Urbina, *supra* note 44; Elise Foley, *Immigrant Freed From 19-Month Detention: 'I Treat My Dogs Much Better Than The Detainees Are Treated'*, HUFFINGTON POST (May 18, 2011), http://www.huffingtonpost.com/2011/05/18/immigrant-freed-from-detention_n_863893.html; Richard Fausset, *Could He be a Good American?*, L.A. TIMES (June 4, 2011), http://www.latimes.com/nation/la-na-deportation-story-htmlstory.html; Yana Kunichoff, *"Voluntary" Work Program Run in Private Detention Centers Pays Detained Immigrants $1 a Day*, TRUTHOUT (July 27, 2012), http://www.truthout.org/news/item/10548-voluntary-work-program-run-in-private-detention-centers-pays-detained-immigrants-1-a-day; Kelsey Sheehy, *Saga Highlights Kinks in Immigrant Detention System*, SAN DIEGO TRIB. (Apr. 23, 2011), http://www.sandiegouniontribune.com/sdut-saga-highlights-kinks-in-immigrant-detention-2011apr23-story.html.

in love with Emily, a U.S. citizen. They married and their son Logan was born in 2006. Mr. Guzmán worked as a chef to support his family.

In 2009, after immigration officials sent a court notice informing Mr. Guzmán that he had lost his status to an incorrect address – a mistake they later admitted – an immigration judge ordered him removed in absentia.

Later that year, while Mr. Guzmán was loading his car with donation bags to take toGoodwill, ICE officers arrested him, handcuffing him in front of Emily and the then three-year-old Logan. An immigration judge subsequently found that Mr. Guzmán's two teenage misdemeanor marijuana convictions consigned him to mandatory detention.

Mr. Guzmán was detained in Stewart Detention Center in Georgia, a private prison operated by the Corrections Corporation of America ("CCA"). To visit him, Emily and Logan had to drive ten hours each way from their family's home in North Carolina. At Stewart, Mr. Guzmán was put to work in the kitchen, where his shift began every morning at 2 a.m. If he was late, the guards threatened him with solitary confinement. At one point, he was forced to work when sick with fever. For this and his other work cleaning communal areas, painting walls, and processing paperwork, he was paid $1 a day. All of Mr. Guzmán's earnings went straight back into the coffers of CCA, since he had no choice but

> to purchase food, basic hygiene products, and phone cards to call his family from the CCA-run commissary.
>
> Finally, after more than a year and a half in detention, Mr. Guzmán was released in May 2011 when he was granted cancellation of removal. Although he is now a lawful permanent resident, Mr. Guzmán and his family are tens of thousands of dollars in debt due to the legal fees and lost income incurred during his lengthy detention.

Collective punishment. Prolonged mandatory detention also inflicts harsh burdens upon the families of those detained. Deprived of the emotional and financial support of their loved ones for months and years, family members are evicted from their homes and separated, children are forced to transfer schools and often suffer psychological trauma, and savings are exhausted on legal fees and travel costs to visit those detained in facilities hours away from their homes. *See* AIJ Br. at 4-12.

Several of the stories we previously shared with the Court illustrate this reality. For example, before he was detained, **Patrick Thaxter** supported his family, including his five U.S. citizen children, by working as a chef at a Caribbean restaurant. After Mr. Thaxter was placed in detention because of a marijuana-related conviction for which he received no jail time, his family was unable to afford rent and was evicted. Forced to move in with other family in Georgia a thirteen-hour drive away, his children suffered academic and social

disruptions and were no longer able to visit him in detention. AIJ Br. at 32-33.

When **Arnold Giammarco** was detained, his family could only visit him once a week due to the length and expense of the trip, and after depleting his modest college fund for their daughter and his parents' pension fund to pay for legal fees, Mr. Giammarco decided to accept deportation to prevent further burdening his family. AIJ Br. at 13-14.

Alexander Lora's two-year-old son was put into foster care when Mr. Lora was put into detention. After Mr. Lora was released, it took another year of legal battles before he could be formally reunited with his son. AIJ Br. at 38.

II. The Indeterminate Length Of Prolonged Immigration Detention Exacerbates Its Punitive Effects.

This Court has previously recognized that "indefinite detention of an alien would raise a serious constitutional problem." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In distinguishing *Zadvydas* from the constitutional challenge to mandatory detention in *Demore*, this Court noted that detention prior to a removal order has a "definite termination point": the entry of a removal order. *Demore*, 538 U.S. at 529.

But while the possibility of a removal order provides a theoretical termination point, it does not make the term of prolonged mandatory detention any more

"definite." *See Definite*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/definite (defining "definite" as "having distinct or certain limits" and "free of all ambiguity, uncertainty, or obscurity"). Noncitizens in prolonged mandatory detention have no certainty as to when they will be released. The actual length of detention often depends on factors over which they have no control, such as legal errors committed by adjudicators and delays in immigration court scheduling. Such indefinite terms of incarceration inflict real physical and psychological harms on individuals who present neither flight risks nor dangers, and the families from which they are separated.

A. The indeterminate length of prolonged detention inflicts physical and psychological harms.

Indeterminacy of prolonged detention is not a mere inconvenience. It causes specific, recognizable harms. *See* Brief of Social Science Researchers and Professors at 10-17, *Jennings v. Rodriguez*, No. 15-1204 (filed Oct. 24, 2016). The generally poor conditions of confinement inflict an increasing toll on the health and physical wellbeing of those detained the longer they remain in custody. *Id.* at 10. Moreover, the uncertainty that they face about when or whether they will be released "frequently leads to high rates of anxiety, despair, and depression" that over time "often manifest themselves as diagnosable mental health conditions." *Id.* at 17. The specific anguish of detention without a definite termination point results in "physical, social

and emotional problems [that] continue to plague individuals long after their release. . . ." *Id.*

There was no definite termination point for any of the individuals profiled in our previous brief who were denied the opportunity for bond hearings. And for many, their prolonged detentions were a direct result of legal errors committed by adjudicators in their cases. **Mr. Joseph** spent three years seeking cancellation of removal before the Third Circuit overturned an immigration judge's erroneous determination that he was ineligible for immigration relief. AIJ Br. at 7. **Ahilan Nadarajah** waited nearly four and a half years in detention for resolution of his asylum case, which took two federal appellate reversals to correct. AIJ Br. at 23-24. The removal order in the case of **Sylvester Owino**'s – detained for nine years – has been to the Ninth Circuit twice and is now back before the Immigration Court on remand, where it remains pending today. AIJ Br. at 40-41.

Federal court review of erroneous administrative decision-making is not the only cause of prolonged detention. Detention is frequently prolonged long *before* an immigrant exercises her right to a federal court appeal. It took an immigration judge fifteen months to decide **Emannuel Boukari**'s application for asylum, withholding, and relief under the Convention Against Torture, another seven months for the Board of Immigration Appeals to reverse the erroneous denial, and a further four months to grant the application. AIJ Br. at 9-10. There was no clear termination point in Mr. Boukari's case at the outset, only the uncertainty that

he may remain in detention for months or years simply to receive the protection from removal that the law provides.[46]

B. Coerced deportation caused by indefinite detention of individuals with substantial claims to relief is a grave burden on liberty.

The government suggests that prolonged detention may be escaped by simply accepting an order of removal. Gov't Second Br. at 13 ("Of course, the government allows aliens in immigration detention pending removal proceedings to end those proceedings, at any time, by accepting a final order of removal, qualifying for voluntary departure, or, in some circumstances, by simply returning home."). Such a position greatly undervalues the severe burdens to liberty that accompany removal of an individual with a substantial claim to relief.

As the stories of our clients and community members illustrate, acceptance of deportation in order to escape prolonged detention imposes life-altering burdens

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[46] The government suggests that no process in prolonged detention was due these individuals because they chose to litigate their cases. Gov't Second Br. at 41 (arguing that "aliens' litigation choices considerably extended their proceedings . . . but that simply illustrates that there is a correspondingly good reason to extend the length of the detention during those proceedings"). But had they chosen not to litigate, they would have abandoned meritorious claims, a result at odds with the government's own interest in providing qualified individuals with relief to removal.

on constitutional liberties. These include the ability to care for family, live in the home one has purchased, and contribute to longtime communities.

For example, **Brayan Fernandez**, a lawful permanent resident, accepted an order of removal to Mexico in order to escape his seven-month detention. Though he qualified for a family-based visa that would have allowed him to remain lawfully in the United States, the visa petition sat dormant for months after submission, and was not adjudicated until one month after his deportation. Today, his U.S. citizen wife and three children live in permanent separation from their husband and father. *See* AIJ Br. at 16-17.

The indefinite nature of prolonged detention is also why **Mr. Giammarco** now faces permanent separation from his U.S citizen wife and daughter. After eighteen months of detention, he accepted an order of removal to Italy, a country he had not lived in since he was four years old and where he barely speaks the language. Without a stable job, he helps with maintenance on a house in a small village in exchange for a room to sleep in, but is unable to provide financial support to his family. Though his wife has worked three jobs to save money to visit him, she and their daughter have only been able to afford to see him twice in the four years since he was deported. *See* AIJ Br. at 13-14.

III. Only A Bond Hearing Remedies The Unconstitutional, Prolonged Detention Of People In Punitive Conditions.

In light of the harms described above, a finding of flight risk or dangerousness by a neutral arbitrator is the minimum procedural protection required to protect against unconstitutionally prolonged detention. The government argues that the process afforded immigrants in removal proceedings is more than enough to address the concerns of detention. Gov't Second Br. at 2, 7-10.

However, as detailed above, detention itself implicates serious liberty interests above and beyond the stakes in removal proceedings. Acknowledging this fact, the government instead points to humanitarian parole for "arriving aliens" held under 8 U.S.C. § 1225(b) and "*Joseph* hearings" for lawful permanent residents and other noncitizens subject to "mandatory detention" under 8 U.S.C. § 1226(c) as adequate protective mechanisms. *Id.* at 10-13. But neither of these processes affords immigrants with an individualized finding of flight risk or dangerousness by a neutral arbitrator – i.e., a bond hearing. And the government's backup solution – individualized habeas petitions in "extraordinary" cases – would render any path to a bond hearing meaningless for people experiencing prolonged detention. *Id.* at 45-47.

For "arriving aliens" detained under § 1225(b), the government points to the availability of humanitarian

parole. Gov't Second Br. at 10. But humanitarian parole is an unreviewable decision made by the jailer, not a neutral arbitrator, and its use can vary dramatically depending on the political climate. *See* AIJ Br. at 21-27.[47] The parole process was no remedy for people like **Ahilan Nadarajah** and **Emannuel Boukari**, profiled in our previous brief, both of whom won their cases, but only after repeated denials of release on parole with little explanation and no review. AIJ Br. at 9-10, 23-24.

Bond hearings, by contrast, provide a meaningful inquiry. Consider **Gloria Cervantes**, a wife and mother fleeing horrific violence, who was denied humanitarian parole five times in boilerplate, unreviewable decisions. After receiving a *Rodriguez* hearing, she was promptly released on $1,500 bond. *Id.* at 35-36.

For immigrants subject to mandatory detention under § 1226(c), the government notes the existence of "*Joseph* hearings" – hearings that provide no inquiry into flight risk or dangerousness, but merely confirm

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[47] As we noted in our previous brief, data shows that parole grant rates for asylum seekers who passed a credible fear interview have dramatically decreased from eighty percent in 2012 to forty-seven percent in 2015. AIJ Br. at 22. A recent Executive Order suggests that humanitarian parole will be even more limited for immigrants at the border. *See* Exec. Order. No. 13,767: Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (Jan. 25, 2017).

whether an individual's conviction triggers the detention statute. Gov't Second Br. at 11-12.[48] *Joseph* hearings thus provide no remedy for people like **Sayed Omargharib**, a father and successful hair stylist whose single conviction (for stealing two pool cues at a local pool hall) was ultimately deemed by a federal court to not be a removable offense. AIJ Br. at 19-20. Because the immigration judge in his case had determined that his conviction would make him removable and subject to mandatory detention, a *Joseph* hearing provided no protection from the nearly two years of detention he endured before the Fourth Circuit reversed the immigration judge's order due to faulty legal reasoning. At no point during Mr. Omargharib's detention did the government ever inquire as to his flight risk or dangerousness. Denied the ability to work and pay his

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[48] The government also suggests that "criminal aliens" as a whole have more diminished due process rights, contending that most concede removability, without providing any proof to that effect. As amici explain in their brief, many of the people impacted by prolonged detention are by definition pursuing their claims to remain in the U.S., and many have lawful status and significant ties to the U.S. For example, data from *Lora* bond hearings for so-called "criminal aliens" in the Second Circuit demonstrate that sixty-nine percent are lawful permanent residents, seventy-nine percent have a U.S. citizen spouse or child, and the average length of residence in the U.S. is twenty-two years. VERA INSTITUTE OF JUSTICE, ANALYSIS OF *LORA* BOND DATA: NEW YORK IMMIGRANT FAMILY UNITY PROJECT 3-4 (2016), http://www.law.nyu.edu/sites/default/files/upload_documents/Vera%20Institute_Lora%20Bond%20Analysis_Oct%20%202016.pdf. Moreover, the government appears to conflate the liberty interests relating to removal proceedings with the government's decision to incarcerate immigrants during those removal proceedings. *See Zadvydas*, 533 U.S. at 721.

mortgage by his prolonged detention, Mr. Omargharib was left homeless upon his release.

Bond hearings ensure that such arbitrary deprivations of liberty do not occur. **Mark Hwang** was found to be neither dangerous nor a flight risk at his *Rodriguez* bond hearing. AIJ Br. at 34. Upon release, he was able to resume work and care for the twin daughters his wife gave birth to shortly before he was detained. Both Mr. Omargharib and Mr. Hwang won their removal cases. But because Mr. Hwang had access to a bond hearing, he was able to avoid the devastating consequences that befall individuals who are neither flight risks nor dangerous, yet still held in prolonged detention.

Part of what made bond hearings in Ms. Cervantes's and Mr. Hwang's cases an effective safeguard of due process was the automatic access to such hearings within six months. AIJ Br. at 33-41. The government's alternative remedy is much different. Not only does the government push the boundaries of permissible mandatory detention well past six months, it proposes a case-by-case remedy to prolonged detention that would require an individual to wait for her detention to become prolonged and then file and litigate a habeas corpus petition. Gov't Second Br. at 46-47. Such a process merely compounds the constitutional injury caused by prolonged detention because district courts themselves require prolonged periods to adjudicate those petitions. As noted in our previous brief, those times may range from 237 days, to 168 days, to 409

days, to 578 days in the First, Third, Sixth and Eleventh Circuits, respectively, for the federal court litigation alone. AIJ Br. at 31.

This is why **Horatio Gomez**, a U.S. citizen, spent over two-and-a-half years in immigration detention, including one year *after* filing a habeas petition. *Id.* at 29-30. Habeas was also an ineffective remedy for **Patrick Thaxter**, whose petition was pending for over 17 months – more than half the length of his total detention – before it was granted. *Id.* at 32-33.

This Court has previously noted how "[l]iberty protects the person from unwarranted government intrusions. . . ." *Lawrence v. Texas*, 539 U.S. 558, 562 (2003). Surely, prolonged detention in conditions that are materially indistinguishable from punishment is a "government intrusion." A bond hearing in which the government bears the burden of persuasion is a proper procedural protection because it is the only way to ensure that such intrusion is not "unwarranted."

The Ninth Circuit's remedy of such a hearing for individuals facing six months of detention is the proper way to vindicate the substantial liberty interest at stake. By not requiring the filing of a habeas petition to secure a bond hearing, the Court of Appeals eliminates substantial periods of unjustified detention that would accrue while waiting for a district court decision.

CONCLUSION

As the stories of our clients and community members illustrate, the liberties at stake in prolonged mandatory detention are profound: freedom from unlawful restraint, contact with family and loved ones, and the ability to lawfully remain in the only country many immigrants have ever known as home. The constitutional rights of our clients and community members should be recognized by, at the very least, the minimal protection of access to a bond hearing.

Respectfully submitted,

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APPENDIX

DESCRIPTIONS OF AMICI CURIAE

Americans for Immigrant Justice

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center, is a non-profit law firm dedicated to promoting and protecting the basic rights of immigrants. Americans for Immigrant Justice is dedicated to advancing and defending the rights of immigrants in detention.

Black Alliance for Just Immigration

The Black Alliance for Just Immigration ("BAJI") is a national organization that organizes, advocates, and raises awareness around issues facing Black immigrants, including immigrants from Africa, the Caribbean, and elsewhere, in the United States. For over a decade BAJI has engaged Black communities to advance the interests of immigrants facing detention and deportation.

Boston College Law School Immigration Clinic

The Boston College Law School Immigration Clinic ("BC Immigration Clinic") is a clinical program of Boston College Law School. The BC Immigration Clinic regularly represents clients who are detained by the Immigration and Customs Enforcement; in these cases, students represent clients both in their removal proceedings and bond hearings. As such, the BC Immigration Clinic has an interest in ensuring that more

detainees are entitled to a bond hearing and that the procedures used in such bond hearings are fair and adequately protect detainees' liberty interests.

Boston University's Immigrants' Rights Clinic

Boston University's Immigrants' Rights Clinic ("IRC") is a law school clinic that provides direct representation to immigrants in removal proceedings, including individuals who face detention without bond pending removal proceedings. IRC has held legal orientation projects within immigrant detention centers and has a longstanding interest in promoting the rights of immigrants in detention.

Brandeis Human Rights Advocacy Program of the University of Louisville School of Law

The Brandeis Human Rights Advocacy Program of the University of Louisville School of Law works actively with the local community, non-profits and stakeholders in the community to advance the human rights of immigrants, refugees and noncitizens.

Bronx Defenders

Founded in 1997, The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, removal defense, family defense, social work support and other civil legal services and advocacy to indigent Bronx residents. Under the New York Immigrant Family Unity Project, we represent over 330 detained

non-citizens every year and witness the adverse impact of prolonged detention on our clients, their ability to pursue legal claims to stay in this country, and their families.

Brooklyn Defender Services

Brooklyn Defender Services ("BDS") is a public defender organization that represents more than 45,000 people every year who cannot afford an attorney in criminal, family, and immigration proceedings. Since 2013, BDS has provided removal defense services through the New York Immigrant Family Unity Project New York's first-in-the-nation appointed counsel program for detained New Yorkers facing removal who cannot afford an attorney. BDS represents Alexander Lora, the petitioner in *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015) in his removal proceedings, and represented him before the federal district court and circuit court.

Center for Community Change

The Center for Community Change ("CCC") is a national not-for-profit organization that works to empower low-income people, particularly in communities of color, to make change that improves our communities and public policy. CCC has a longstanding history of advancing and defending the rights of immigrants. CCC coordinates the Fair Immigration Reform Movement (FIRM), a network of 42 member organizations in 33 states, working to keep families together and fix

our nation's broken immigration system. As part of this work, we have encountered countless numbers of immigrant community members who have had their lives ripped apart because of prolonged detention. We have witnessed firsthand the devastating impact detention has on immigrant families.

Center for Constitutional Rights

The Center for Constitutional Rights ("CCR") is a national non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international human rights law. Founded in 1966, CCR has a long history of litigating cases on behalf of those with the fewest protections and least access to legal resources, including numerous landmark civil and human rights cases fighting for racial and immigrant justice and protection from indefinite detention and solitary confinement.

Center for Gender & Refugee Studies

The Center for Gender & Refugee Studies ("CGRS") at the University of California Hastings College of the Law works to protect the fundamental human rights of asylum seekers, with a particular focus on expanding protection for women, children, and LGBT individuals. CGRS has played a central role in the development of law and policy related to asylum seekers, including on detention and enforcement issues.

Coalition for Humane Immigrant Rights of Los Angeles

The Coalition for Humane Immigrant Rights of Los Angeles ("CHIRLA") is a non-profit organization with local and state presence in California, and national recognition. Our mission is to advance the human, civil rights, and full integration of New Americans and their children into the fabric of our society.

Community Initiatives for Visiting Immigrants in Confinement

Community Initiatives for Visiting Immigrants in Confinement ("CIVIC") is the national immigration detention visitation network, which is working to end U.S. immigration detention by monitoring human rights abuses, elevating stories, building community-based alternatives to detention, and advocating for system change. CIVIC has a longstanding interest in this Court's decision and has been advocating for years against the lengthy detention of noncitizens held in pre-removal immigration detention in the United States. *See, e.g.*, Rethinking Pre-removal Immigration Detention in the United States: Lessons from Europe and Proposals for Reform, *Oxford University Press – Refugee Survey Quarterly* (2012) 31 (3):69-100, doi:10.1093/rsq/hds007, *available at* http://tinyurl.com/hds007.

Community Justice Clinic of the University at Buffalo School of Law

Community Justice Clinic of the University at Buffalo School of Law ("CJC") is a law school clinic that represents immigrants, including individuals who are subject to the mandatory detention provisions of the Immigration and Nationality Act. CJC also represents and works with immigrant-led organizations with members who have been subject to prolonged detention.

Community Legal Services in East Palo Alto

Community Legal Services in East Palo Alto ("CLSEPA") is a nonprofit organization that provides legal assistance to low income immigrants in and around East Palo Alto, California, where two-thirds of the population is Latino or Pacific Islander. The immigration team provides consultations to and represents local residents in various types of immigration benefits and proceedings, including detained and non-detained removal proceedings in immigration court.

Criminal/Immigration Defense Clinic at Colorado Law School

The Criminal/Immigration Defense Clinic at Colorado Law School is a law clinic that represents indigent clients charged with misdemeanor offenses in Boulder County, CO. We have witnessed first-hand the devastating impacts of prolonged detention on immigrants

while they pursue their ability to remain in the U.S. with their families.

Cumberland Legal Aid Clinic

The Cumberland Legal Aid Clinic, through its Refugee and Human Rights clinical program, is a law-school based clinic in which law students represent immigrants fleeing human rights abuses who wish to remain in the U.S. The clinic regularly represents immigrants who face detention and are seeking asylum, withholding of removal, protection under the Convention against Torture, special immigrant juvenile status, protection under the Violence Against Women Act or adjustment of status. We are intimately familiar with the adverse impact prolonged detention has on an immigrant's ability to defend against removal.

Detention Watch Network

As a national coalition of organizations and individuals concerned about the impact of immigration detention on individuals and communities in the United States, Detention Watch Network ("DWN") has a substantial interest in the outcome of this litigation. Founded in 1997, DWN has worked for nearly two decades to fight abuses in detention, and to push for a drastic reduction in the reliance on detention as a tool for immigration enforcement. Since 2011, through its advocacy and organizing work, DWN has been

advocating for the elimination of all laws mandating the detention of immigrants.

Dolores Street Community Services

Dolores Street Community Services ("DSCS") provides pro bono removal defense to low-income immigrants in San Francisco, CA, specializing in representing particularly vulnerable clients. DSCS clients have suffered the severe consequences of prolonged detention; some clients have accepted removal orders despite fears of persecution and other compelling claims for relief, simply because they could no longer endure detention. Other clients have experienced the incalculable benefits of an individualized custody determination, often released on their own recognizance or minimal bond after six months of unreviewed custody.

Grassroots Leadership

Grassroots Leadership is an Austin, Texas-based national organization that works to end prison profiteering and reduce reliance on criminalization and detention. Grassroots Leadership has long advocated for community-based alternatives to detention, particularly for vulnerable populations including asylum-seeking women and families. We have also witnessed the impact of prolonged detention on migrants and their families after they have been released from detention and as they attempt to integrate into the community.

Immigrant Defense Project

Immigrant Defense Project ("IDP") is a not-for-profit legal resource and training center dedicated to promoting fundamental fairness for immigrants accused and convicted of crimes. IDP provides defense attorneys, immigration attorneys, immigrants, and judges with expert legal advice, publications, and training on issues involving the interplay between criminal and immigration law.

Immigrant Justice Corps

Immigrant Justice Corps ("IJC") is the country's first immigration legal fellowship program. IJC seeks to expand access to counsel by increasing the quantity of immigration lawyers and the quality of the immigration bar. IJC's fellows regularly represent detained noncitizens and have seen the impact of long-term detention on their clients' well-being and their ability to pursue relief.

Immigrant Rights Clinic of Washington Square Legal Services, Inc.

Immigrant Rights Clinic of Washington Square Legal Services, Inc. ("IRC") is a law clinic that represents and works with immigrants and immigrant rights organizations, including individuals who face detention without bond pending removal proceedings. IRC has a longstanding interest in advancing and defending the rights of immigrants in detention.

Immigrants' Rights Clinic of Morningside Heights Legal Services, Inc.

Immigrants' Rights Clinic of Morningside Heights Legal Services, Inc. is a law clinic that represents immigrants, including individuals in detention. IRC is committed to advocating on behalf of and advancing the rights of immigrants in detention.

Immigration Clinic of the University of Miami School of Law

Immigration Clinic of the University of Miami School of Law is a law clinic that advocates on behalf of immigrants in a wide variety of administrative and federal court immigration proceedings and collaborates with immigrant rights groups on projects to advance the cause of social justice for immigrants. Many of the clinic's clients are detained. The clinic has challenged the lawfulness of the prolonged detention of its clients in U.S. District Court and appeared as counsel for *amici curiae* in *Sopo v. U.S. Atty Gen.*, 825 F.3d 1199 (2016).

Irish International Immigrant Center

The Irish International Immigrant Center ("IIIC") is a multi-service welcome center for immigrants of all nationalities, based in Boston, Massachusetts. Originally founded in 1989 to serve the needs of Irish immigrants in the New England area, the IIIC now annually provides immigration, education, and social services to thousands of immigrants from around the world.

Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law

The Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law ("IJC") is a law clinic that represents individuals facing deportation, as well as community-based organizations, in both public policy and litigation efforts. IJC has a long-established interest in fighting for the rights of immigrants pursuing their ability to remain in the U.S., including representing people who face detention without bond pending removal proceedings.

LatinoJustice PRLDEF

LatinoJustice PRLDEF is a national not-for-profit civil rights legal defense fund which has defended the constitutional rights, civil rights and the equal protection of all Latinos under law. Since 1972, PRLDEF's mission has been to promote civic participation, to cultivate Latino leaders, and to promote voting rights, employment opportunity, language rights, educational access, and immigrants' rights.

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") is a non-profit legal services and social justice organization that works in partnership with the private bar to protect and advance the rights and status of people of color, low-income communities, and immigrants and refugees

through direct legal services, impact litigation, and policy advocacy. As part of LCCR's core commitment to protecting the rights of asylum-seekers, it has a strong interest in preventing the harmful effects of prolonged detention on noncitizens and their ability to fairly defend themselves in removal proceedings.

Legal Aid Society of New York

The Legal Aid Society of New York was founded in 1876 to serve New York's immigrant community and is the nation's oldest and largest not-for-profit law firm for low-income persons. For several decades, Legal Aid has maintained an Immigration Law Unit ("ILU") within its Civil Practice. The ILU has an expertise in representing immigrants at the intersection of criminal and immigration law and has also represented, and served as amicus on behalf of, immigrants seeking release from prolonged and mandatory detention in habeas and other federal court proceedings.

Loyola University New Orleans College of Law Clinic

The Loyola University New Orleans College of Law Clinic has operated an Immigration Clinic for decades. Louisiana is home to three major immigration detention centers and has a growing population of immigrants. Our Immigration Clinic has been providing assistance to people in the Deep South outside of Louisiana as well.

Make the Road New York

Make the Road New York ("MRNY") is a nonprofit, membership-based community organization that integrates adult and youth education, legal and survival services, and community and civic engagement, in a holistic approach to help low-income New Yorkers improve their lives and neighborhoods. MRNY is at the forefront of numerous initiatives to analyze, develop, and improve civil and human rights for immigrant communities, including issues related to detention and deportation of immigrant communities.

National Latina Institute for Reproductive Health

The National Latina Institute for Reproductive Health ("NLIRH") is a not-for-profit organization dedicated to advancing the health, dignity, and justice for the 28 million Latinas, their families, and their communities in the United States. NLIRH has a longstanding history of working to ensure fair treatment of women, children, and families, irrespective of legal status. As part of its work, it recognizes the direct impact immigration status has on access to reproductive health care. The deprivation of rights, family disruption, inadequate access to health care, loss of livelihood, re-traumatization and abuse that are inherent to conditions of confinement, are only exacerbated through prolonged detention.

Neighborhood Defender Services of Harlem

Neighborhood Defender Services of Harlem is a public defense organization that represents non-citizens who are arrested in New York City. Specifically, the Immigration Practice, represents non-citizens in removal proceedings, including individuals who are held in immigration detention without bond.

New York Immigration Coalition

The New York Immigration Coalition ("NYIC") is an advocacy and policy umbrella organization for more than 175 multi-ethnic, multi-racial, and multi-sector groups across the state. Through its members and its own advocacy the NYIC has long worked against unjust immigration policies, including the use of detention against immigrants.

Pangea Legal Services

Pangea Legal Services ("Pangea") is a nonprofit organization that advocates for immigrants in deportation proceedings through legal representation, community empowerment, and policy advocacy. The impact of prolonged detention for Pangea's clients is stark: it has resulted in a loss of employment, loss of custody by mothers over their minor children, traumatized children who experience loss of a parent, loss of health, reliving traumas of being held captive in detention after escaping abusive captivity abroad, eviction from the home, and homelessness by immediate relatives of detained immigrants.

Project South

Project South is a Southern-based leadership development organization that creates spaces for movement building. We work with communities pushed forward by the struggle – to strengthen leadership and to provide popular political and economic education for personal and social transformation. We build relationships with organizations and networks across the US and global South to inform our local work and to engage in bottom-up movement building for social and economic justice. Our legal and advocacy work is focused on defending Muslim and immigrant communities against discrimination.

Queens Law Associates – Public Defenders

Queens Law Associates – Public Defenders ("QLA") is a nonprofit legal service provider representing low-income individuals – some of whom are noncitizens – facing criminal charges in the criminal justice system. QLA also provides free legal services to noncitizens in their immigration matters, including representation in deportation proceedings. QLA has a direct interest in this case, as its clients may be subject to mandatory detention provisions based on convictions and may be detained by ICE for prolonged periods.

Seton Hall University School of Law Center for Social Justice

The Seton Hall University School of Law Center for Social Justice empowers law students to gain critical,

hands-on experience while providing pro bono legal services for low-income residents in the region. The Center has long worked to defend the statutory, constitutional, and human rights of immigrants.

Southern Poverty Law Center

The Southern Poverty Law Center ("SPLC") fights all forms of discrimination and works to protect society's most vulnerable members through litigation, education, and monitoring organizations that promote hate. The SPLC provides *pro bono* assistance to and advocates on behalf of immigrant detainees throughout the southern United States, including Alabama, Florida, Georgia, Louisiana, and Mississippi.

University of California, Irvine School of Law Immigrant Rights Clinic

The University of California, Irvine School of Law Immigrant Rights Clinic is a law clinic providing pro bono legal services to immigrants in removal proceedings. The Clinic also partners with community and legal advocacy organizations on policy and litigation projects to advance immigrants' rights and immigrant workers' rights. For several years, clinic students working under the supervision of faculty attorneys have represented immigrants detained at the Adelanto Detention Center and Orange County, CA facilities in their bond hearings.

University of Houston Law Center Immigration Clinic

The University of Houston Law Center Immigration Clinic advocates on behalf of immigrants in a broad range of complex legal proceedings before the immigration and federal courts and the Department of Homeland Security. The Clinic collaborates with other immigrant and human rights groups on projects that advance the cause of social justice for immigrants.

University of Maryland Carey School of Law Immigration Clinic

The University of Maryland Carey School of Law Immigration Clinic represents individuals in immigration removal proceedings, including individuals who are detained without bond. The Clinic represents individuals who are subject to mandatory detention, many of whom end up being detained for prolonged periods of time.

UnLocal, Inc.

UnLocal, Inc. is an immigration legal services and community education non-profit based in New York City. UnLocal provides presentations on immigration law, know your rights trainings, and legal consultations at community-based spaces including schools, workplaces, places of worship and other immigrant-serving organizations. UnLocal clients and the membership of many of UnLocal's community-based partners include

individuals who have faced detention without bond during the pendency of their removal proceedings.

Valparaiso University Law School Immigration Clinic

The Valparaiso Immigration Clinic ("VIC") is a law clinic at Valparaiso University Law School that represents immigrants in Northwest Indiana and Chicago, including individuals who have been held in immigration detention. VIC students have also assisted with case intake for immigrant detainees, provided community outreach in Northwest Indiana concerning immigrant rights issues, and represented immigrant rights organizations that work with immigrant detainees.

Washington and Lee University School of Law Immigrant Rights Clinic

The Washington and Lee University School of Law Immigrant Rights Clinic provides free legal services to non-citizens in removal proceedings in Virginia. Many of our clients are detained in the immigrant detention facility in Farmville, VA, which is the primary detention facility in Virginia, housing between 600-700 non-citizens.

Washington Defender Association

The Washington Defender Association ("WDA") is a statewide non-profit organization whose membership

is comprised of public defender agencies, indigent defenders and those who are committed to seeing improvements in indigent defense. In 1999, WDA established WDA's Immigration Project to give the Washington defense bar access to expert immigration law resources in order to effectively represent their noncitizen clients with regard to the immigration consequences at stake in their criminal cases. Detention issues are a vital part of the immigration consequence of a conviction, and can radically affect access to counsel and case outcomes.